Law Enforcement Digest

November 2003

HONOR ROLL

562nd Basic Law Enforcement Academy – May 7, 2003 through September 12, 2003

President:	Christopher Pelczar – King County Sheriff's Office
Best Overall:	Christopher Pelczar – King County Sheriff's Office
Best Academic:	Christopher Pelczar – King County Sheriff's Office
Best Firearms:	Thomas Morton – Benton County Sheriff's Office
Tac Officer:	Cpl. Donna Rorvik – Kirkland Police Department

563rd Basic Law Enforcement Academy – June 3, 2003 through October 8th, 2003

President:	Christopher Lee – Pasco Police Department
Best Overall:	Nicholas McClelland – Pierce County Sheriff's Office
Best Academic:	Nicholas McClelland – Pierce County Sheriff's Office
Best Firearms:	Paul Osness – Pierce County Sheriff's Office
Tac Officer:	Officer Mike O'Neill – Olympia Police Department

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WASHINGTON STATE SUPREME COURT

UNDER WASHINGTON CONSTITUTION, ARTICLE 1, SECTION 7, SEARCH WARRANT REQUIRED FOR POLICE USE OF GPS DEVICE; BUT WARRANT AFFIDAVIT HELD TO ESTABLISH PROBABLE CAUSE, SO STATE PREVAILS

PRELIMINARY NOTE BY LED EDITORS: ***Phil Hannum (*****phannum@gte.net*****), retired from the Seattle Police Department and also retired from a career of educating on criminal procedures, continues to update his training materials. He has written the following excellent capsule description of the Jackson holding of the Washington Supreme Court:***

> ***Global Positioning System tracker. A unanimous Washington Supreme Court recently held that under Article 1 § 7 of the Washington Constitution a court order is required before police can attach a GPS device to a vehicle to shadow its movements. The GPS has certain advantages over human trackers: it does not get tired, lost, or run out of gas. It is not affected by heavy traffic. It is difficult to detect. It can accurately track the vehicle's route, when and where it stopped, for how long, and make it all available to investigators "24/7." The prosecution had argued that using it was no different***

than the police tailing someone from an unmarked car. The Court disagreed, finding that the device does not merely augment an officer's senses, like the use of binoculars or flashlights, but rather provides a vastly improved alternative to traditional visual tracking, and requires a search warrant.

State v. Jackson, ___ Wn.2d ___, 76 P.3d 217 (2003)

Facts and Proceedings below: (Excerpted from Supreme Court opinion)

> On October 18, 1999, Jackson called 911 at 8:45 a.m. to report that his nine-year-old daughter Valiree was missing from their residence in the Spokane Valley. Immediately, volunteers joined sheriff's personnel and canine units in a thorough search of the neighborhood. Deputy Scott Nelson arrived at the Jackson residence, where Valiree and Jackson had lived with his parents the previous seven months. Nelson interviewed Jackson's mother, who said she kissed a sleeping Valiree good-bye as she left for work a little before 4:30 that morning. Jackson said he had last seen Valiree at 8:15 a.m. in the front yard. Her backpack was on the front porch.
>
> Detective Madsen, who also responded, saw bloodstains on Valiree's pillow and faded blood on the bed sheet. Jackson explained that Valiree had a nose bleed the night before, but Madsen saw nothing used to stop a nosebleed. Madsen took the bedding for analysis. Detectives soon believed that Jackson had something to do with his daughter's disappearance. They informed him of their suspicion that he may have removed Valiree from the home.
>
> On October 23, 1999, police obtained a warrant to search the residence and impound and search Jackson's two vehicles, a 1995 Ford pickup and a 1985 Honda Accord (warrant # 1). On October 26, Detective Knechtel obtained a 10-day warrant (warrant # 2) to attach GPS devices to the two vehicles while they were still impounded. The devices were connected to the vehicles' 12-volt electrical systems. Use of the GPS devices allowed the vehicles' positions to be precisely tracked when data from the devices was downloaded. The vehicles were returned to Jackson but he was not informed about installment of the devices. Detective Madsen did inform Jackson that the police believed he had hastily buried Valiree's body, that animals would likely dig her up, and that the body would be found and used as evidence against him. Knechtel obtained a second 10-day warrant to maintain the GPS devices on the vehicles (warrant # 3).
>
> Data from the GPS device on the truck showed that on November 6, 1999, Jackson drove to his storage unit and then to a remote location on a logging road, the Springdale site, where the truck was motionless for about 45 minutes. Data showed that on November 10, 1999, Jackson made a trip to another remote location (the Vicari site) where he remained about 16 minutes, and then traveled to the Springdale site where the truck remained stopped for about 30 minutes, then left and stopped several

other places, including the storage unit. Investigators discovered Valiree's body in a shallow grave at the Springdale site, and found evidence at the Vicari site (two plastic bags with duct tape containing hair and blood--the duct tape edge matched duct tape later found at Jackson's residence in a search pursuant to another warrant).

On November 13, 1999, after stopping at his storage unit, Jackson borrowed his neighbor's truck, telling the neighbor he had a job to finish. He borrowed the truck, he said, because he suspected he was being followed. Hunters near the Springdale site saw him in a pickup truck close to the Springdale gravesite. When Jackson returned the truck, he left a shovel in it.

A warrant was issued for Jackson's arrest that same day. In the evening police stopped him, noting that he had been driving around with an unloaded shotgun in the vehicle and acting suicidal. He was initially hospitalized but later released and charged with Valiree's murder.

At trial, the evidence showed that Valiree suffocated. From jail Jackson wrote to his parents claiming a new hunting buddy "Craig" may have kidnapped Valiree. He subsequently admitted making this up. Instead, his defense at trial was that Valiree overdosed on a prescription antidepressant prescribed for her by her counselor. He testified at trial that he thought that the police would blame him for the death since he had been a suspect in the unexplained 1992 disappearance of Valiree's mother, and therefore he panicked and buried the body. The State presented substantial evidence that Jackson killed Valiree because he saw her as an impediment to his reuniting with his former girlfriend. Valiree and the girlfriend did not get along.

Following his trial, on October 5, 2000, a jury returned a verdict of guilty of first degree murder. The court denied Jackson's motion for a new trial or arrest of judgment due to cumulative error. The court imposed an exceptional sentence of 672 months based upon several aggravating factors, including the impact of the crime on the community.

Jackson appealed and the Court of Appeals affirmed. State v. Jackson, 111 Wn. App. 660 (2002) [**Aug 02 LED:17**]. Among other things, that court concluded that the warrants authorizing installation and use of the GPS devices were unnecessary under article I, section 7 of the Washington State Constitution; the court thus did not reach the merits of Jackson's challenge to issuance of the warrants.

ISSUES AND RULINGS: 1) Under article 1, section 7 of the Washington constitution, were search warrants required for police installation of the global positioning system (GPS) devices to the suspect's vehicles? (ANSWER: Yes, rules a unanimous Supreme Court); 2) Did the affidavits establish probable cause for issuance of the search warrants? (ANSWER: Yes, rules a unanimous Supreme Court).

Result: Affirmance of Court of Appeals decision that affirmed a Spokane County Superior Court conviction of William Bradley Jackson for first degree murder.

ANALYSIS:

1) GPS and Washington constitutional privacy protection

The Court of Appeals held that warrantless installation and use of a GPS device on a private vehicle does not violate article I, section 7. That court appears to have reasoned that because no warrant is required, it is unnecessary to decide whether the warrants that the police actually obtained in this case were supported by probable cause. Accordingly, the first question before us is whether the Court of Appeals erred in its holding that installation and use of GPS devices on vehicles does not constitute a search or seizure under article I, section 7 of the Washington State Constitution.

Article I, section 7 provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." The inquiry under article I, section 7 is broader than under the Fourth Amendment to the United States Constitution, and focuses on "those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass." Thus, whether advanced technology leads to diminished subjective expectations of privacy does not resolve whether use of that technology without a warrant violates article I, section 7.

Where a law enforcement officer is able to detect something at a lawful vantage point through his or her senses, no search occurs under article I section 7. "[W]hat is voluntarily exposed to the general public and observable without the use of enhancement devices from an unprotected area is not considered part of a person's private affairs." The court has also affirmed as constitutional searches involving sense-enhancing devices such as binoculars or a flashlight, allowing police to see more easily what is open to public view. "However, a substantial and unreasonable departure from a lawful vantage point, or a particularly intrusive method of viewing, may constitute a search." State v. Young, 123 Wn.2d 173 (1994) **April 94 LED:02**. Thus, where police used an infrared thermal device to detect heat distribution patterns within a home that were not detectable by the naked eye or other senses, the surveillance was a particularly intrusive means of observation that exceeded allowable limits under article I, section 7.

The court has also noted that the nature and extent of information obtained by the police, for example, information concerning a person's associations, contacts, finances, or activities is relevant in deciding whether an expectation of privacy an individual has is one which a citizen of this state should be entitled to hold.

Here, the Court of Appeals first held that because Jackson's vehicles were impounded for searches pursuant to another warrant (warrant # 1) at the time the GPS devices were installed, "potential interference issues" were

foreclosed, and the initial intrusion was not a trespass . . . We disagree. The Florida Court of Appeals was faced with a similar issue under the Fourth Amendment when a tracking device was installed on an airplane. Officers had a warrant authorizing installation of a device "upon or under" the aircraft, but also installed an additional tracking device under a panel at the rear of the interior of the plane. The first device failed, the second worked. The court found installation of the second device was "tantamount to an illegal entry and beyond the scope of the warrant," and suppressed evidence obtained through its use. Johnson v. State, 492 So.2d 693, 694 (Fla.Dist.Ct.App.1986). Similarly, here the warrant authorizing a search of the vehicles for blood, hair, body fluids, fibers and other evidence relevant to Valiree's disappearance did not authorize installation of GPS devices, and installation of the devices was clearly in excess of the scope of the warrant.

The Court of Appeals also held that use of the GPS devices was merely sense augmenting, revealing information that Jackson exposed to public view. The court noted that law enforcement officers could legally follow Jackson on his travels to the ministorage compartment and the two gravesites. We do not agree that use of the GPS devices to monitor Mr. Jackson's travels merely equates to following him on public roads where he has voluntarily exposed himself to public view.

It is true that an officer standing at a distance in a lawful place may use binoculars to bring into closer view what he sees, or an officer may use a flashlight at night to see what is plainly there to be seen by day. However, when a GPS device is attached to a vehicle, law enforcement officers do not in fact follow the vehicle. Thus, unlike binoculars or a flashlight, the GPS device does not merely augment the officers' senses, but rather provides a technological substitute for traditional visual tracking. Further, the devices in this case were in place for approximately two and one-half weeks. It is unlikely that the sheriff's department could have successfully maintained uninterrupted 24-hour surveillance throughout this time by following Jackson. Even longer tracking periods might be undertaken, depending upon the circumstances of a case. We perceive a difference between the kind of uninterrupted, 24-hour a day surveillance possible through use of a GPS device, which does not depend upon whether an officer could in fact have maintained visual contact over the tracking period, and an officer's use of binoculars or a flashlight to augment his or her senses.

Moreover, the intrusion into private affairs made possible with a GPS device is quite extensive as the information obtained can disclose a great deal about an individual's life. For example, the device can provide a detailed record of travel to doctors' offices, banks, gambling casinos, tanning salons, places of worship, political party meetings, bars, grocery stores, exercise gyms, places where children are dropped off for school, play, or day care, the upper scale restaurant and the fast food restaurant,

the strip club, the opera, the baseball game, the "wrong" side of town, the family planning clinic, the labor rally. In this age, vehicles are used to take people to a vast number of places that can reveal preferences, alignments, associations, personal ails and foibles. The GPS tracking devices record all of these travels, and thus can provide a detailed picture of one's life.

We find persuasive the analysis of the Oregon Supreme Court in a case involving a radio transmitter attached without a warrant to the exterior of a suspect's vehicle. State v. Campbell, 306 Or. 157, 759 P.2d 1040 (1988). Like this State's, the Oregon constitutional protection against warrantless searches and seizures focuses on the right to privacy, which is not defined by technological advances. Similar to discussions by this court, the Oregon court emphasized the importance of the method by which the police obtained information. As the court pointed out, an officer could look through a living room window from across the street aided by a telephoto lens to observe a defendant exposing himself to public view, but the officer could not obtain the same information by entering the home without consent. Thus, the court said, the question was not whether what the police learned by use of the transmitter was exposed to public view, but whether use of the device can be characterized as a search. The court said that "[i]ntrusions and technologically enhanced observations into 'protected premises' infringe [protected] privacy interests ... but the question whether an individual's privacy interests have been infringed by an act of the police cannot always be resolved by reference to the area at which the act is directed." The court said that a privacy interest is "an interest in freedom from particular forms of scrutiny." The court reasoned that use of a device that enabled the police to locate a person within a 40-mile radius day or night "is a significant limitation on freedom from scrutiny" and "a staggering limitation upon personal freedom." The court noted that allowing use of such radio transmitters would mean that "individuals must more readily assume that they are the objects of government scrutiny" noting that commentators "have observed that freedom may be impaired as much, if not more so, by the threat of scrutiny as by the fact of scrutiny." The court held that a warrant was required, and affirmed suppression of evidence obtained.

If police are not required to obtain a warrant under article I, section 7 before attaching a GPS device to a citizen's vehicle, then there is no limitation on the State's use of these devices on any person's vehicle, whether criminal activity is suspected or not. The resulting trespass into private affairs of Washington citizens is precisely what article I, section 7 was intended to prevent. It should be recalled that one aspect of the infrared thermal imaging surveillance in Young that troubled us was the fact that if its use did not require a warrant, there would be no limitation on the government's ability to use it on any private residence, at any time regardless of whether criminal activity is suspected.

As with infrared thermal imaging surveillance, use of GPS tracking devices is a particularly intrusive method of surveillance, making it possible to acquire an enormous amount of personal information about the citizen under circumstances where the individual is unaware that every single vehicle trip taken and the duration of every single stop may be recorded by the government.

We conclude that citizens of this State have a right to be free from the type of governmental intrusion that occurs when a GPS device is attached to a citizen's vehicle, regardless of reduced privacy expectations due to advances in technology. We hold that under article I, section 7 a warrant is required for installation of these devices.

2) Probable cause

A search warrant may be issued only upon a determination of probable cause. Probable cause exists where the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime may be found at a certain location. State v. Thein, 138 Wn.2d 133 (1999) [**August 99 LED:15**]. The affidavit must be based upon more than mere suspicion or personal belief that evidence of the crime will be found at the place to be searched.

The affidavit in support of issuance of the initial warrant for the GPS devices included the following: Bloodstains were found on Valiree's pillow and sheet. More than one red pubic hair was found in her sheets, and both she and Jackson have red hair. Her family physician had advised the detective that Valiree had not reached puberty and to his knowledge did not have pubic hair. *[COURT'S FOOTNOTE: This ultimately proved not to be true in fact, and Jackson challenged inclusion of this information. However, the physician, who had seen Valiree several times in 1999, did tell the detective that Valiree did not have pubic hair to his knowledge and had not reached puberty and the accurate statement of this information in the affidavit was not a misrepresentation.]* The affidavit said this suggested the possibility the father was donor of the hair and the possibility of some kind of sexual misconduct or assault. Valiree had been taught by her grandmother to scream if threatened, but no screams were heard. Her backpack was found on the front porch of the residence. The house and neighborhood had been thoroughly searched. No one else saw the child between 4:30 a.m. and 8:30 a.m., and there was some evidence she had been missing only a half hour. Mr. Jackson was the only person at the home and he had access to two vehicles. The affidavit in support of the additional warrant, seeking an extension of 10 days of surveillance using the GPS devices, was an addendum.

In light of the thorough search of the residence and neighborhood, a reasonable person could infer that Valiree had been removed, likely in a vehicle. Since no screams were heard, an inference could be drawn that Valiree might have been killed or that she was either incapacitated or

removed by someone she trusted. Given the limited time frame, it could also be inferred that there was insufficient time to hide her or her body or other incriminating evidence. Further, if she was alive or alive and incapacitated, the abductor would need to assure she would not escape and to provide for her basic needs. The presence of red pubic hair when her physician advised that she had not reached puberty suggests the possibly of sexual assault or an attempt, possibly by Jackson, who has red hair. Jackson was the only one present at the residence, and it would be reasonable to infer that he had something to do with Valiree's disappearance given all the facts and circumstances.

We conclude that the affidavits set forth sufficient facts and circumstances for a reasonable person to infer that Jackson was probably involved in a crime and that installation of the GPS devices would lead to evidence of that crime, i.e., that Jackson might use a vehicle to travel to provide for Valiree's needs since it was reasonable to infer that she might still be alive. And, assuming she was dead, it was reasonable to infer that Jackson would use a vehicle to drive to her location to thoroughly hide the body and dispose of evidence, given the limited time that would have been available to Jackson the morning Valiree disappeared.

Jackson argues, however, that the affidavit in support of the first of the two warrants relating to the GPS devices contains a generalization of the kind disapproved in Thein, and therefore the affidavit did not establish probable cause. The affidavit provided, in addition to the information described above, the affiant's statement that he was "aware and has been told that in some homicide cases and others, the perpetrator has returned to crime scenes, for various reasons."

In Thein, the affidavit contained only generalized statements of belief about drug dealers' common habits, particularly that such persons commonly keep a portion of their drug inventory, paraphernalia, drug trafficking records, large sums of money, financial records of drug transactions, and weapons in their residences. The affidavit expressed the belief that such evidence would be found at the suspect's address. We found that such generalizations do not establish probable cause for issuance of a search warrant for an alleged drug dealer's residence, since a finding of probable cause must be grounded in fact. "Absent a sufficient basis in fact from which to conclude evidence of illegal activity will likely be found at the place to be searched, a reasonable nexus [between the items to be seized and the place to be searched] is not established as a matter of law." We declined to essentially adopt a per se rule that once a person is determined to be a drug dealer, then a finding of probable cause to search that individual's residence would automatically follow.

The trial court here attempted to distinguish Thein, saying that the idea that drug dealers keep drugs in their homes is not as "common-sensical" as the idea that criminals return to the scene of their crimes. However, the statement about criminals returning to the scene of the crime, if accepted, would substitute for specific facts and circumstances establishing probable

cause. The statement also suggests that probable cause to attach a tracking device to a suspect's vehicle would automatically follow in any case where the criminal activity might involve more than one location. We conclude that similar to the circumstances in Thein, the statement here is a generalization that by itself cannot establish probable cause to issue a warrant.

Unlike the case in Thein, however, the affidavit here establishes the necessary probable cause, as discussed above, without the generalization about which Jackson complains.

Jackson also argues that the two warrants authorized a "fishing expedition[ ]"--a general exploratory search to see what could be found when the GPS data was downloaded. This again focuses on the generalization about criminals returning to the crime. However, to the extent this suggests a challenge to the degree of particularity regarding the place to be searched and items to be seized, we find no constitutional difficulty. As to particularity of place, the warrant was issued to authorize installation of the GPS devices on the vehicles for stated periods of time in order to track where Jackson went. Thus, the "place" searched is the travel pattern of the vehicles after placement of the devices and the item to be seized is the location of Jackson's movements. The routes obviously could not be identified with any greater specificity, but a description of the place to be searched and items to be seized is valid if it is as specific as the nature of the activity under investigation permits.

In United States v. Karo, 468 U.S. 705 (1984), the Court held that the warrantless installation of a beeper in an ether can with the consent of an informant who transferred several cans of ether to the suspect violated no Fourth Amendment interest, but that monitoring the beeper after it was taken inside a private residence violated the warrant requirement. The Court rejected the government's argument that a warrant for tracking a beeper inside a private residence should not be required because of difficulty complying with the particularity requirement of the Fourth Amendment. The government had argued it could not describe the place to be searched because that was what was sought to be discovered through the search. The Court said that regardless,

> it will still be possible to describe the object into which the beeper is to be placed, the circumstances that led agents to wish to install the beeper, and the length of time for which beeper surveillance is requested. In our view, this information will suffice to permit issuance of a warrant authorizing beeper installation and surveillance.

Karo, 468 U.S. at 718.

We find this reasoning persuasive. The affidavit here described the place to be searched and the items to be seized with as much particularity as the circumstances permitted, and the warrants did not authorize a "fishing expedition."

> We hold that the affidavits in support of the warrants authorizing installation and use of GPS devices on Jackson's vehicles established probable cause for issuance of the warrants.

[Some citations omitted]

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BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) DURESS DEFENSE NOT AVAILABLE WHERE CHARGE IS ATTEMPTED MURDER – In State v. Mannering, ___ Wn.2d ___, 75 P.3d 961 (2003), the Washington Supreme Court unanimously rules that the defense of duress may not be asserted by a defendant charged with attempted murder.

RCW 9A.16.060(1)(c) provides that the defense of duress "is not available if the crime charged is murder or manslaughter." Defendant Mannering pointed out that the statute does not explicitly preclude asserting the duress defense when the charge is attempted murder.

However, the Supreme Court rules for the State, explaining that a common sense reading of the duress statute together with several other statues in Title 9A RCW requires an interpretation that does not permit a person to argue duress as a justification for attempted murder.

Result: Affirmance of Court of Appeals decision (see September 02 **LED**:14) that affirmed the Thurston County Superior Court conviction of Christina Ann Mannering for attempted first degree murder while armed with a deadly weapon and for first degree burglary while armed with a deadly weapon.

(2) DISTRICT COURT HAS EQUITABLE POWER ENABLING COURT TO ISSUE MUTUAL ANTIHARASSMENT PROTECTION ORDERS ON ITS OWN – In Hough v. Stockbridge, ___ Wn.2d ___, 76 P.3d 216 (2003), the Washington Supreme Court rules unanimously that district court's in Washington have power to issue mutual antiharassment orders where only one party has filed a petition for an order. The Hough Court explains its reasoning as follows:

> Robert and Diana Hough petitioned the district court under chapter 10.14 RCW for an order for protection from harassment by their neighbors, Frank and Susan Stockbridge. After a hearing, the district court issued protection orders preventing either party from contacting the other, even though only the Houghs had petitioned for an order. Each order had a duration of one year. Just before the orders expired, the Houghs filed a motion to extend the protection order against the Stockbridges and to have the order against them lifted. The district court denied the motion, and both orders expired.
>
> The Houghs appealed to superior court under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The superior court declared the matter moot and dismissed the appeal. The Houghs sought

> discretionary review at the Court of Appeals, which was granted. On review, the [Court of Appeals] held that the Houghs had failed to provide any valid reason for extending the order against the Stockbridges, and affirmed the district court's refusal to extend that order. [See **Nov 02 LED:16** for entry regarding Court of Appeals decision.] We agree that this is a proper result. But the court also vacated the order that had initially been entered against the Houghs, holding that a district court has no authority to issue a protection order on its own motion in the absence of a petition requesting one. We disagree.
>
> A district court has power to issue mutual protection orders on its own motion. Authority to issue such orders can be found both in the state constitution and the applicable statute. In 1993, the Washington Constitution was amended to vest district courts with original jurisdiction in cases of equity. See Wash. Const. art. IV, § 6 ("Superior courts and district courts have concurrent jurisdiction in cases in equity."). And an action under chapter 10.14 RCW is an action in equity. State v. Brennan, 76 Wn. .App. 347 (1994). The applicable statute, RCW 10.14.080(6), provides that a court granting a protection order "shall have broad discretion to grant such relief as the court deems proper." Sitting in equity, a court "may fashion broad remedies to do substantial justice to the parties and put an end to litigation."
>
> Because district courts have equitable powers and the statute specifically grants broad discretion to fashion relief, we hold that district courts may issue mutual protection orders even in the absence of a petition requesting that relief, as the facts of the relationship between the parties may warrant. We thus reverse the Court of Appeals insofar as it vacated the restraining order against the Houghs.

[Some citations omitted]

Result: Reversal of Court of Appeals decision to the extent that the Court of Appeals vacated that part of a mutual antiharassment protection order that the Pierce County District Court entered on its own motion.

(3) SPOKANE PROSECUTOR OK ON POLICY OF NOT PLEA BARGAINING WITH THOSE WHO COMPEL CI DISCLOSURE IN CIVIL FORFEITURE – In State v. Moen, ___ Wn.2d ___, 76 P.3d 721 (2003), the Washington Supreme Court rules 7-2 (Justices Sanders and Alexander dissenting) that an informal unwritten "no plea bargain" policy of the Spokane County Prosecutor's Office, foreclosing a reduction or dismissal of charges against a criminal defendant who has successfully compelled disclosure of a confidential informant's identity in a civil forfeiture proceeding, does not violate a criminal defendant's right to due process by chilling his right to discovery in a civil case.

Result: Affirmance of Court of Appeals decision that had affirmed Spokane County Superior Court convictions of Peter H. Moen for delivery of a controlled substance (two counts) and possession of a controlled substance with intent to deliver (one count).

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WASHINGTON STATE COURT OF APPEALS

PRE-CHARGE INVESTIGATIVE DELAY NOT A DUE PROCESS VIOLATION IN ADULT PROSECUTION FOR CRIME COMMITTED WHILE A JUVENILE; ALSO, CHILD HEARSAY IS ADMISSIBLE

State v. Salavea, 115 Wn. App. 52 (Div. II, 2003)

Facts and Proceedings below: (Excerpted from Court of Appeals opinion)

> In August 1998, B.T. learned from a relative that Salavea, her nephew, had sodomized her sons, R.K.T. and R.U.T. B.T. telephoned R.U.T., who was visiting California; R.U.T. denied that Salavea had touched him and asked to speak with his brother. B.T. repeated her question several times before R.U.T. admitted that Salavea had victimized both him and R.K.T.
>
> B.T. next contacted Jennifer Chavez, a close friend, told her that R.U.T. had been molested, and asked her to drive R.U.T. home from California. On the drive to Washington, Chavez and R.U.T. spoke several times about the incidents. B.T. also told Leah Hill, a woman who lived with her, that "her boys had been raped." Hill asked R.K.T. several times if something was wrong before he mentioned incidents regarding Salavea. In October 1998, a child interviewer questioned R.U.T. and R.K.T.; both boys reported that Salavea had sexually abused them.
>
> In October 2000, shortly after Salavea turned 18, the State charged him with four counts of first degree child rape and two counts of first degree child molestation. The State alleged that Salavea committed the offenses against R.K.T. and R.U.T., his cousins, between February 1996 and June 1998, when Salavea was between the ages of 13 and 15.
>
> The relevant dates and events are as follows:

7/1/97	Salavea allegedly commits child rape after this date.
9/29/98	Pierce County Prosecutor's Office receives the investigative file.
10/9/98	Salavea turns 16.
10/30/98	An investigator interviews the two alleged victims.
11/2/98	An investigator interviews the victim's sister.
3/8/99	The State reviews Salavea's file for charging.
3/9/99	The State charges Salavea's then 14-year-old brother for the same conduct against the same victims.
4/99	Salavea leaves for Utah after violating his probation.
7/00 to 8/00	Salavea returns to Washington.
9/14/00	The State arrests Salavea for robbery in Tacoma, he provides false information.
10/9/00	Salavea turns 18.
10/25/00	The State charges Salavea as an adult.

Salavea moved to dismiss the charges, arguing that preaccusatorial delay violated his due process rights. The trial court denied the motion, finding that the delay was not unreasonable and did not unfairly prejudice Salavea.

The trial court also conducted a child hearsay hearing under RCW 9A.44.120, finding that the victims' hearsay statements were admissible. A jury found Salavea guilty as charged.

ISSUES AND RULINGS: 1) Did the pre-charge delay in charging Salavea as an adult violate his constitutional due process rights? (ANSWER: No); 2) Did the trial court err in admitting the child hearsay under RCW 9A.44.120? (ANSWER: No)

Result: Affirmance of Pierce County Superior Court conviction of Dynamite Salavea, aka Pale Tuupo, for first degree child rape and first degree child molestation.

ANALYSIS: (Excerpted from Court of Appeals opinion)

1) Pre-charge delay

Salavea argues that preaccusatorial delay denied him due process and the benefits of juvenile court jurisdiction. An intentional delay to avoid the juvenile justice system violates due process; a negligent delay may violate due process. Washington courts use a three-prong test to determine whether preaccusatorial delay violates due process: (1) the defendant must show prejudice from the delay; (2) the court must consider the reasons for the delay; and (3) if the State can justify the delay, the court balances the State's interest against the prejudice to the defendant.

Salavea does not argue that the State should have charged him before he turned 16; rather, he contends the State should have charged him when it charged his brother, March 1999. Consequently, Salavea impliedly concedes that the investigative delay (between September 29, 1998, when the State received the file, and November 2, 1998, when the child interviews concluded) was neither improper nor unreasonable. *[Court's Footnote: See, e.g., State v. Lidge, 111 Wn.2d 845 (1989) ("[C]ourts generally conclude that investigative delays are justified.")]* Thus, in analyzing the second prong, we hold that the record does not disclose any irregularity; therefore, the investigative delay was justified.

We hold that the delay did not unfairly prejudice Salavea because he turned 16 before the investigation concluded and the State charged him with first degree child rape. Therefore, the automatic decline statute, RCW 13.04.030, applied and Salavea would have been tried as an adult even if the State had charged him in March 1999. We do not need to analyze the other prongs as Salavea suffered no prejudice.

Salavea argues that he must have committed the offense when he was 16 or 17 for the automatic decline statute to apply; but the statute does not support this argument.

Consequently, whether the State charged Salavea in late 1998, when the investigation concluded, or in March 1999, when the State charged Salavea's brother, the automatic decline statute would have applied, and Salavea would have been tried as an adult. Thus, the delay in charging Salavea did not deny him due process.

2) Child hearsay (RCW 9A.44.120)

Salavea also challenges the admission of the victims' statements to B.T., Jennifer Chavez, Leah Hill, and the child interviewer. Such statements are admissible when the child is under 10 years of age, is otherwise available to testify, and the court finds that the "time, content, and circumstances of the statement provide sufficient indicia of reliability[.]" RCW 9A.44.120

In determining the reliability of hearsay, courts weigh nine nonexclusive factors: (1) whether the declarant had an apparent motive to lie; (2) the declarant's general character; (3) whether more than one person heard the statements; (4) the spontaneity of the statements; (5) the timing of the declaration and the relationship between the declarant and the witness; (6) whether the statements contain express assertions of past fact; (7) whether the declarant's lack of knowledge could be established by cross-examination; (8) the possibility of the declarant's recollection being faulty; and (9) whether the circumstances suggest that the declarant misrepresented the defendant's involvement. The admissibility of child hearsay lies within the trial court's sound discretion, which this court will not reverse absent manifest abuse of discretion.

Salavea challenges the spontaneity and timing of the statements, claiming that the statements were the product of suggestion, coaching, and reinforcement. But a review of the record shows that the trial court applied the correct analysis and did not err.

First, not every factor must be satisfied before a statement is admitted. And by challenging only two factors, Salavea concedes that the other seven factors were satisfied. Second, the victims' statements to the interviewer satisfy the spontaneity factor; the interviewer used the victims' words and asked open-ended questions. Thus, even if the victims' statements to the other hearsay witnesses were neither spontaneous nor timely, they were merely cumulative of the interviewer's and the victims' testimony. Third, it is of little relevance that the victims did not make their statements until several months after Salavea's crimes. The victims claimed that Salavea threatened to harm them if they said anything. Finally, the relationships between the victims and the witnesses were strong, favoring admissibility. The trial court did not abuse its discretion in admitting the hearsay statements.

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BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

(1) UNDER RCW 9.41.040, WASHINGTON CONVICTION OF INDECENT LIBERTIES BARS POSSESSION OF FIREARMS FOR LIFE UNLESS GOVERNOR PARDONS OR ANNULS – In Smith v. State, __ Wn. App. __, 76 P.3d 769 (Div. III, 2003), Division Three of the Court of Appeals affirms a superior court decision and rejects the arguments of Harry Avery Smith, who has a record of a 1989 Washington conviction for indecent liberties, that Washington statutes give Washington courts the power to restore his firearms rights. The Smith decision holds that the only way that Smith can get his firearm rights restored under current law is through a pardon or annulment of his conviction obtained from the Governor.

LED EDITORIAL INTRODUCTORY NOTE: Judge Kurtz authors the lead opinion for the 3-judge panel in this case. Judge Brown signs on to that opinion. The lead opinion authored by Judge Kurtz is somewhat confusing. In our entry on the Smith decision below, we will offer our interpretation of the opinion; law enforcement readers should consult their prosecutor or legal advisor for their interpretations of the lead opinion.

Lead opinion by Judge Kurtz

Harry Avery Smith has a clean criminal record with the exception of a 1989 conviction for indecent liberties. Under RCW 9.41.040 (hereafter section 040), subsection (1), a person convicted of any felony (committed at any time) or of certain enumerated domestic violence gross misdemeanors (committed on or after July 1, 1993) is prohibited from owning or possessing a firearm in the State of Washington.

However, subsection 3(b) of section 040 provides that certain specified judicial or executive actions can relieve that person from the bar of the statute:

> A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. (Underlining added)

In this case, Smith filed a request in superior court for, among other things, a "certificate of rehabilitation." The lead opinion authored by Judge Kurtz declares, however, that there is no statutory authority under Washington law for a Washington court to issue a certificate of rehabilitation. Thus, the Kurtz opinion states that the only way for any person to obtain judicial relief from the firearms-possession-barring effect of a Washington conviction is under subsection (4) of section 040.

Under subsection (4)(a)(i) of section 040, as a general rule (subject to the exception addressed in the next paragraph of this **LED** entry) persons convicted of felonies can petition a court and the court must restore their firearms rights if (1) the persons have spent five or more consecutive years in the community since being released from

confinement; (2) the persons have not during that time been convicted or currently charged with any felony, gross misdemeanor or misdemeanor crimes; and (3) the persons have no prior felony convictions that bar possession of a firearm.

Smith also sought to have his firearms rights restored under subsection (4) of section 040. The lead opinion by Judge Kurtz explains, however, that the second sentence in the first unnumbered paragraph of subsection (4) of section 040 precludes restoration of firearms rights to any person who has:

> previously been convicted of a sex offense prohibiting firearm ownership under subsection (1) of [section 040] and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both…

Because Smith has a record of conviction of a felony sex offense, Smith has no right to ever petition a court to have his firearms rights restored under subsection (4), Judge Kurtz opines. That means that Smith has no judicial avenue for relief from his firearm-possession disability under Washington statutes. Accordingly, the concluding portion of the lead opinion by Judge Kurtz declares:

> Thus the only way that Mr. Smith could have his firearm rights restored is by [executive] pardon or [executive] annulment of his conviction.
>
> Mr. Smith is not eligible to have his firearm rights restored [by a court]. The [superior] court did not err by failing to hold a hearing to issue a certificate of rehabilitation or by denying Mr. Smith's motion to restore his firearms rights.

Judge Sweeney's concurring opinion

Judge Sweeney writes a separate opinion in which he states that he agrees with both the result and the analysis by the majority, but that he believes that Mr. Smith could have asked the superior court to exercise the superior court's purported constitutional power to grant him relief from the statutory conviction-based bar to firearms possession.

LED EDITORIAL COMMENT REGARDING THE CONCURRING OPINION BY JUDGE SWEENEY: We disagree with Judge Sweeney. We do not believe that the superior courts have the constitutional power to restore firearms rights other than is provided in chapter 9.41 RCW.

Result: Affirmance of Spokane County Superior Court decision holding that Harry Avery Smith is not eligible to have his firearms rights restored.

(2) EVIDENCE HELD SUFFICIENT TO CONVICT "SHORT-DROPPING" PETROLEUM-TRUCK DRIVER OF THEFT; ALSO, BECAUSE HIS FUEL TAX EVASION OFFENSE WAS A "CONTINUING CRIME," THE STATUTE OF LIMITATIONS DID NOT BEGIN TO RUN FOR THAT CRIME UNTIL THE CRIMINAL SCHEME WAS COMPLETED – In State v. Greathouse, 113 Wn. App. 889 (Div. I, 2002), the Court of Appeals rejects a defendant's challenges to his convictions on 14 theft counts and on a fuel tax evasion charge.

Facts and proceedings below

Greathouse was a tank truck driver for Dennis Petroleum, a major distributor of petroleum in the grater Seattle area. Without his employer's knowledge, Greathouse regularly "short-dropped" fuel to those fuel customers (including the Boeing Company) who he knew did not measure the exact amount of fuel received. Dennis Petroleum was thus unaware that it was being paid by these customers for more petroleum than Greathouse delivered to the customers. Meanwhile, Greathouse sold the skimmed (retained) petroleum to Gaston Brothers for cash at a cut-rate price, and he pocketed the cash.

After a four-year period of continuous short-dropping, Greathouse's scheme was discovered. The commercial customers who were short-dropped by Greathouse were unable to individually establish how much they had been shorted, and Dennis Petroleum did not pay or otherwise make up for these customers' losses. Greathouse was prosecuted and convicted on multiple theft counts, as well as on a charge of evading Washington's special fuel tax.

Analysis in support of theft convictions

On appeal, Greathouse pointed out that the theft prosecutions were based on his taking something from his employer. He argued that, because his employer was paid by the unknowing shorted customers for the full amount of fuel that Greathouse was supposed to deliver, the employer lost nothing of value that would support a theft charge. In part, the Greathouse Court's analysis rejecting this theory is as follows:

> We conclude that just as it is no defense to the crime of embezzlement that the perpetrator intended eventually to pay for the property that he or she fraudulently converted to his or her own purposes, and subsequently did so, neither is it a defense that the person who issued a purchase order for the property, and who should have received the property but did not receive it, paid for it in the mistaken belief that it had been delivered to him. By that same token, we conclude that there is no failure of proof in such a case of embezzlement where the prosecution is unable to show that the victim of the embezzlement suffered a financial loss, because yet another victim of the overall larcenous scheme paid for the converted property in the belief that it had been delivered to him, when in fact it was not delivered to him, but instead was delivered by the perpetrator to a third person for his own account and not the account of his employer.
>
> Put in more concrete terms, it is no defense to the charges of embezzlement in this case, and it is not fatal to the sufficiency of the evidence, that the very means by which Greathouse was able to conceal his embezzlement for so many years--short-dropping customers of Dennis Petroleum who could not accurately measure the amount of fuel they received--resulted in there ultimately being no financial loss to Dennis Petroleum. The only reason that there was no such loss was because after the whole scheme was revealed, these customers were not able to take advantage of Dennis Petroleum's offer to reimburse them, for the same reason that Greathouse got away with his crimes for so long--they had no means of measuring by how much they had been short-dropped.

> As Greathouse would have us construe and apply the language in [State v. Lee, 128 Wn.2d 151 (1995)], embezzlement by means of short-dropping one's employer's customers would become the proverbial perfect crime: There could be no theft by embezzlement because the short-dropped customers could not measure the amount of fuel they lost so as to obtain reimbursement from the employer, thus, the employer ultimately would sustain no loss; there could be no conviction for theft by taking from the customers because they could not measure the amount of their loss; and the short-dropping driver could simply pocket his ill-gotten gains--here, $169,530 over a period of five years--and thumb his nose at the criminal justice system. We do not believe that this is what the Supreme Court intended when it said in State v. Lee, 128 Wn.2d 151 (1995), that "a loss to the victim is key in assessing whether an unlawful taking has occurred[.]" We decline to so hold, and reject Greathouse's challenge to the sufficiency of the evidence to convict him of the fourteen counts of theft by embezzlement.

Analysis rejecting statute-of-limitations challenge to part of fuel tax evasion charge

Greathouse was charged in 1999 with evading the special fuel tax under chapter 82.38 RCW. There is a five-year statute of limitations for this offense. Greathouse argued that his conduct from 1992 to 1994 fell outside the limitations period. However, under the following "continuing crime" analysis, the Greathouse Court rejects his argument:

> As the State points out, when a continuing crime is charged, the crime is not completed, and the statute of limitations does not begin to run until the continuing criminal impulse has been terminated. State v. Carrier, 36 Wn. App. 755 (1984); State v. Mermis, 105 Wn. App. 738 (2001). Notably, Greathouse does not contend that his conviction for evading a special fuel tax requires dismissal based on charging outside the statute of limitations. Nor does he challenge the State's contention that the crime was not complete until the continuing criminal impulse terminated. Because this was a continuous crime, properly charged within the applicable five-year statute of limitations, the trial court did not err in imposing a penalty of 100 percent of the evaded amount, as required by statute.

Result: Affirmance of King County Superior Court conviction of Michael E. Greathouse for 14 counts of theft and one count of evading a special fuel tax.

(3) SENTENCING COURT'S POWERS AND LIMITATIONS UNDER SRA REGARDING COMMUNITY CUSTODY CONDITIONS ADDRESSED -- In State v. Jones, __ Wn. App. __, 76 P.3d 258 (Div. II, 2003), the Court of Appeals addresses issue regarding how a trial court may condition community custody imposed under the version of the Sentencing Reform Act, RCW 9.94A currently in effect. The Jones Court summarizes its holdings in the case as follows:

> (1) that a court may condition community custody by requiring that the offender obey all laws; (2) that a court may order an offender not to consume alcohol regardless of whether alcohol contributed to the crime;

(3) that a court may not order an offender to participate in alcohol counseling unless alcohol contributed to the crime; and (4) that a court may not order an offender to participate in mental health treatment or counseling unless the court finds, based on a presentence report and any applicable mental status evaluations, that the offender suffers from a mental illness which influenced the crime.

Result: Affirmance in part and reversal in part of Pierce County Superior Court sentencing of Everett Wade Jones (who was convicted per a guilty plea of first degree burglary and other crimes and was sentenced to prison time and concurrently subjected to community custody conditions); case remanded to Superior Court for striking of a condition pertaining to alcohol counseling, and for reconsideration of whether the State can meet proof requirements for imposing a condition of mental health counseling and treatment.

(4) RESTRAINING ORDER ISSUED UNDER DISSOLUTION STATUTE WAS PROPERLY WORDED, DEFENDANT VIOLATED THE ORDER, AND DEFENDANT'S VIOLATION WAS A CLASS C FELONY – In State v. Turner, __ Wn. App. __, 74 P.3d 1215 (Div. II, 2003), the Court of Appeals addresses issues concerning a defendant's alleged violation of a restraining order issued in a dissolution proceeding. The superior court dismissed a charge of violating a restraining order that had been issued in dissolution proceedings pursuant to chapter 26.09 RCW. The superior court held that the restraining order was not properly worded because the order did not contain a warning that is required under the Domestic Violence Protection Act, chapter 26.50.

The Court of Appeals reverses the dismissal order in Turner, holding as summarized below.

(1) The restraining order issued in the dissolution of marriage proceeding prohibiting Turner "from molesting or disturbing the peace" of his wife did not need to include a warning that Turner could be arrested even if his wife invited or allowed him to violate the order, and that it was Turner's sole responsibility to avoid or refrain from violating order. While such a warning is a requirement for restraining orders issued under the Domestic Violation Protection Act (DVPA), chapter 26.50 RCW, it is not a requirement for orders issued under the dissolution of marriage chapter, 26.09. It was sufficient that the dissolution restraining order included the warning mandated by dissolution of marriage statute, stating that violation of the order with actual notice of its terms was a criminal offense and would subject Turner to arrest.

(2) Where the order issued in the dissolution of marriage proceeding restrained Turner from molesting or disturbing the peace of his wife or from having contact with her, the order also necessarily restrained him "from acts or threats of violence" against her, even though the restraining order did not contain this wording. Accordingly, Turner's threats against his wife come within the provisions of the dissolution statute, RCW 26.09.300, stating that a knowing violation of a dissolution proceeding restraining order restricting a person from acts or threats of violence is punishable under the domestic violence prevention statute, chapter 26.50 RCW.

(3) Turner's violation of the restraining order issued in the dissolution of marriage proceeding prohibiting him "from molesting or disturbing the peace" of wife, could serve as basis for prosecuting an assault as a Class C felony under RCW 26.50.110.

Result: Reversal of Skamania County Superior Court order dismissing a charge against Rickey F. Turner for violating the restraining order by assaulting his wife; case remanded for possible trial.

(5) "EXOTIC ANIMALS" ORDINANCE SURVIVES CONSTITUTIONAL CHALLENGE – In Rhoades v. City of Battle Ground, 115 Wn. App. 752 (Div. II, 2003), the Court of Appeals upholds against a variety of constitutional (and other) attacks a City of Battle Ground ordinance banning the keeping of "exotic animals" as defined under the ordinance. The Rhoades Court describes the ordinance in part as follows:

> Gerald and Heidi Rhoades owned one African serval, one caiman, and two cougars when, in the summer 2000, the City of Battle Ground (City) passed an ordinance (Ordinance) making exotic animal ownership unlawful. Under the Ordinance, it is unlawful "for any person to bring into the city, or to possess or maintain within the city, any exotic animal as defined in Section 6.10.020(7)." (Battle Ground Municipal Code (BGMC) 6.10.130). The Ordinance defined exotic animal as "any animal which, when in its wild state, or due to its size, habits, natural propensities, training or instinct, presents a danger or potential danger to human beings and is capable of inflicting serious physical harm upon human beings, and includes inherently dangerous mammals and reptiles." (BGMC 6.10.020(7)). "Inherently dangerous mammals" are "any live member of the *canidae*, *felidae*, or *ursidae families*, including hybrids thereof, which, due to their inherent nature, may be considered dangerous to humans[.]" (BGMC 6.10.020(7)(a)). "Inherently dangerous reptiles" are "any live member of the class *reptilia*" that is venomous, "rear fanged," or a member of the order *Crocodilia* (including crocodiles, alligators, and caiman) over two feet long.
>
> The Ordinance also prospectively exempts animals kept on later annexed land:
>
> It is further provided that any animal that is properly being maintained on a parcel of property that is annexed into the City of Battle Ground shall be deemed to be a non-conforming use so long as it is compatible with the existing land use while the property was outside the City of Battle Ground. Other than the licensing of dogs and dangerous dogs, the provisions of this chapter shall not apply until such time as the pre-existing use of the land becomes a conforming use.
>
> (BGMC 6.10.170).
>
> The Rhoadeses challenged the Ordinance immediately, but the municipal court dismissed the case as unripe. Then in August 2002, the City issued

the Rhoadeses an initial notice of violation of BGMC 6.10.130 and BGMC 6.10.075. The notice warned that a criminal citation could follow if they did not remove the animals from the City within 30 days.

The Rhoadeses appealed the notice of violation to municipal court, which found that they violated the Ordinance. They appealed to the superior court, and both sides moved for summary judgment. The court granted the City's motion.

Result: Affirmance of Clark County Superior Court decision granting summary judgment to the City of Battle Ground and upholding the City's exotic animal ordinance.

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NEXT MONTH

The December 2003 **LED** will include a subject matter index for the January 2003 through December 2003 **LED**s.

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INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCW'S, AND TO WAC RULES

The Washington Office of the Administrator for the Courts maintains a web site with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [http://www.courts.wa.gov/]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [http://legalwa.org/] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions from 1939 to the present. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/rules].

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct]. This web site contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. another website for U.S. Supreme Court opinions is the Court's website at [http://www.supremecourtus.gov/opinions/02slipopinion.html]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since January 1995 can be accessed (by date of decision only) at [http://www.ca9.uscourts.gov/ca9/courtinfo.nsf/main/page]

Easy access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC and State Toxicologist rules at WAC 448-15), as well as all RCW's current through January

2003, is at [http://slc.leg.wa.gov/]. Information about bills filed in 2003 Washington Legislature is at the same address -- look under "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent WAC amendments is at [http://slc.leg.wa.gov/wsr/register.htm]. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. The address for the Criminal Justice Training Commission's home page is [http://www.cjtc.state.wa.us], while the address for the Attorney General's Office home page is [http://www/wa/ago].

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The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General's Office. Questions and comments regarding the content of the **LED** should be directed to Mr. Wasberg at (206) 464-6039; Fax (206) 587-4290; E Mail [johnw1@atg.wa.gov]. Questions regarding the distribution list or delivery of the **LED** should be directed to [ledemail@cjtc.state.wa.us]. **LED** editorial commentary and analysis of statutes and court decisions express the thinking of the writers and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The **LED** is published as a research source only. The **LED** does not purport to furnish legal advice. **LED**'s from January 1992 forward are available via a link on the Commission's Internet Home Page at: [http://www.cjtc.state.wa.us].